IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 1 OF 2005

Wigan & Leigh College (India) Limited. .. Applicant

Vs.

Empire Industries Limited .. Respondent

Mr. H.N. Thakore with Ms. Jyoti Ghag i/b M/s. Thakore Jariwala and Associates for applicant.
Mr. Birendra Saraf i/by D.S.K. Legal for Respondent.

CORAM : B. H. MARLAPALLE,J.

Date : February 17, 2006.

P.C.:

1. Heard the learned counsel for the respective parties.

2. The applicant has raised a claim of Rs.30,04,839/- towards the amount spent by them for arranging faculty and premises etc. and a further claim of Rs.89,08,000/- towards loss of revenue. By letter dated 20/8/2001 they sought to invoke Clause No.31 of the agreement dated 21/7/2000 and suggested the names of three retired Hon'ble Judges of this Court for appointment as the sole Arbitrator.

3. The respondent-company has filed reply and opposed the application primarily on the ground of limitation. It has been stated that the cause of

action would start running after expiry of a month's period from 20/8/2001 and if so taken at the most from 21/9/2001 and the application having been filed on or about 4/11/2004, it is beyond the period of three years and thus hit by limitation.

4. The learned counsel for the respondent has relied upon the decision of this court in the case of Shri Nyandeshwar Bhiku Dhargalkar vs. Executive Engineer, PWD, Goa reported in **1999 (4) Bom. C.R. 537**. In para 9 of the said decision this court observed as under:-

> "9. Considering the pronouncements above referred to by the Apex Court in the matter of period of limitation applicable to the matters pertaining to applications required to be filed under section 20 of the old Act, it is clear that such application could have been filed within a period of 3 years from the date the cause for arbitration has arisen and that the cause for arbitration can be said to have arisen from the date the party serves a notice upon the other party requiring the appointment of an arbitrator for settlement of disputes between the parties. Bearing in mind this proposition of law as pronounced by the Apex Court and referring to the facts of the present case it is case of the applicant himself that pursuant to failure on the part of the respondent to pay the amount demanded by the applicant under letter dated 6th June 1995, disputes and differences had arisen between the parties and, therefore, the applicant served the notice dated 31st January 1996 calling upon the respondent to refer the matter for arbitration requiring the arbitrator to settle the disputes between the parties. Therefore, in terms of the decision of the Apex Court, for all purposes, the cause for arbitration arose in favour of the

> applicant on service of the notice dated 31st January 1996 upon the respondent. Considering this date as the cause for arbitration for the applicant, the application for appointment of arbitrator in terms of section 11(6) of the new Act could have been filed within 3 years from the said date, i.e. on or before 31st January, 1999. Undisputedly, the applicant had filed this application on 30th September, 1998. Hence it cannot be said that the application was barred by the law of limitation."

5. Following the said ratio, it is clear that the applicant ought to have approached this court before the end of September 2004 so as to be within the limitation of three years and obviously this petition under Section 11 of the Act has been filed beyond the period of three years. By following the decision in the case of Nyaneshwar B. Dhargalkar the contentions of the respondent will have to be upheld that the application is hit by limitation.

6. The application is, therefore, rejected as being beyond limitation. It is clarified that this order does not deal with the merits of the rights and contentions of the parties.

(B.H. Marlapalle, J.)